IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4222 OF 2006

Sou Ranjana Prakash Gogad and ors. ..Petitioners

Vs.

Bharat Petrolium Corporation Ltd. and anr. ..Respondents

Mr. Shriram S. Kulkarni for petitioners.
Mr. S.G. Page with Mr. S.R. Page for respondent no.1.
Mr. P.S. Dani for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : July 24, 2006.

P.C.:

1. Heard Mr. Kulkarni the learned counsel for the petitioners-plaintiffs, Mr. Page the learned counsel for respondent no.1 and Mr. Dani the learned counsel for respondent no.2.

2. The plaintiffs have filed Special Civil Suit No.138 of 2006 and the same is pending before the Joint Civil Judge, Senior Division at Nasik. The relief prayed for is for declaration, permanent injunction and possession of the suit property i.e. an open plot of land by cancelling the registered Lease Deed dated 26/9/2005.

3. In the said suit the present respondent no.2 filed an application at Exh.43 for being impleaded as an additional defendant and the said application has been allowed by the trial court on 16/6/2006 and hence this petition under Article 227 of the Constitution.

4. Mr. Kulkarni the learned counsel for the petitioners submits that the respondent no.2 is an agent and he had no interest involved in the suit property and the plaintiffs have not claimed any relief against him. He could be at the most called as a witness who has commercial interest in the suit property and, therefore, there was no case made out to allow the application filed under Order I Rule 10 of C.P.C. In support of his arguments, Mr. Kulkarni has relied upon the following decisions of the Supreme Court:-

(a) Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay (1992 JT (2) 116).

(b) Razia Begum vs. Sahebzadi Anwar Begum and ors. (AIR 1958 SC 886).

. The learned Judge of the trial court has overruled the objections raised by the plaintiffs and allowed the application on the ground that the applicant was found to be a necessary party as his direct interest is involved in the suit property.

5. In the plaint itself the plaintiffs have claimed that the Lease Deed dated 26/9/2005 was obtained by misrepresentation, by playing fraud and by suppression of facts and the respondent no.2 who was the applicant before the trial court has been specifically named to have been as one of the perpetrators or the persons responsible for this misrepresentation, though no relief has been sought against him and he was brought in picture as one of the defendants. It is further noted from the Written Statement filed by the defendant no.1 that the applicant was allotted the dealership at the subject location vide the order dated 28/4/2005 and in the terms and conditions of the said allotment order it is very specifically stated that the defendant

no.1-company will develop the outlet for the applicant and the same will be operated by the dealer. After the said allotment order has been issued, the defendant no.1-company has taken steps for locating the land and it selected the suit land. The initial proposal was given by the defendant no.1 way back in January, 2005. The lease terms between the parties were agreed. Some of the main terms are that the rental consideration would be Rs.12,000/- per month subject to increase after every five years, the lease period shall be 29 years and the increase in the rental charges would be 10% after every five years etc. The Lease Deed has been registered on 26/9/2005 with the Register No. 4803 in the office of the Sub Registrar, Nashik and various steps have been taken to construct the outlet including the storage etc. The dealership so selected was reserved for a retired officer of the Armed Forces and the applicant is one such officer and obviously it is as per the Government of India's policy for rehabilitation of the retired officer of the Armed Forces. It is thus clear that the respondent no.2-applicant has direct interest in the suit cause.

6. The majority view in the case of Razia Begum (Supra) has laid down certain guide-lines for impleading/addition of parties under Order I Rule 10 of C.P.C. and it would be appropriate to reproduce the following two guide-lines:-

(a) That the question of addition of parties under R.10 of O.1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code.

(b) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject matter of the litigation.

7. Mr. Kulkarni's submissions that the applicant has only commercial interest cannot be accepted, more so when the same dealership has been offered to the applicant for his rehabilitation and he has direct interest in the suit cause in view of the terms of the dealership order dated 28/4/2005 and hence the discretion exercised by the trial court cannot be faulted with.

8. The petition is rejected summarily.

9. Mr. Kulkarni submits an oral application for stay to this order. The application is hereby rejected.

(B.H. Marlapalle,J.)